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BEFORE THE

**Federal Communications Commission**

SEP - 6 1994

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Pacific Bell Petition for  
Rulemaking to Amend Section  
69.106 of the Commission's  
Rules

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RM-8496

**REPLY COMMENTS OF COMPUSEVE INCORPORATED**

CompuServe Incorporated ("CompuServe"), by its attorneys and pursuant to Section 1.405 of the Commission's rules, hereby submits this reply to the initial comments filed August 22, 1994, in the above-captioned proceeding. CompuServe filed initial comments opposing grant of Pacific Bell's petition for rulemaking.

CompuServe agrees with Southwestern Bell that the initiation of rulemaking on Pacific Bell's proposal to establish a switched access call setup rate element "would be overly burdensome to the Commission and the industry." Southwestern Bell at 1. As explained in CompuServe's initial comments, several other important factors also militate against the initiation of a rulemaking to establish a call setup charge, including the fact that changing the current per minute local switching rate structure would have a deleterious impact on important segments of the nation's economy, would penalize efficient users of the public switched network, like CompuServe, and would be inconsistent with well-established Commission

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policies and, arguably, the Communications Act. Comments of CompuServe Incorporated at 4-11.

CompuServe opposes Southwestern Bell's recommendation that, instead of initiating a rulemaking, the Commission should grant Pacific Bell (and any other local exchange carrier ("LEC") so requesting) a waiver of the access charge rules to implement a call setup rate element. On two occasions in the past, the Commission has considered requests for waiver of Section 69.106 to permit the establishment of a call setup charge, and on both occasions the Commission has denied the requests. Bell Atlantic Telephone Companies, 4 FCC Rcd 7210 (1989); U.S. West Communications, Inc., 7 FCC Rcd 4043 (1992). The Commission found that the establishment of a new switched access rate element must be evaluated thoroughly, a process not consistent with resolution of a waiver request submitted by a single carrier that is not subject to Federal Register notice. See, e.g., Bell Atlantic Telephone Companies, 4 FCC Rcd at 7211. The Commission determined correctly that a change in the switched access charge rate structure on a waiver basis would undermine access customers' business plans that were based on a reasonable expectation of stability in the access charge rate structure. Id.

Southwestern Bell has not provided any justification for the Commission to treat a waiver request by Pacific Bell any differently than the two previous waiver requests on the same subject matter that the Commission already has denied. Indeed, neither Southwestern Bell nor any other party has met its burden

under the Commission's waiver policy to demonstrate that the current rule is not in the public interest when applied to its particular case and that grant of a waiver will not undermine the public policy served by the rule. See Bell Atlantic Telephone Companies, 7 FCC Rcd 2955 at 2956 (1992), quoting WAIT Radio v. FCC, 418 F. 2d 1153 (D.C. Cir. 1969), cert. denied, 407 U.S. 1027 (1969).

In fact, Pacific Bell has not provided sufficient data to support either a waiver request or a petition for rulemaking. As demonstrated in the initial comments filed August 22, 1994, Pacific Bell has not purported to explain (1) why its claimed per call setup costs are more than ten times those of another LEC,<sup>1/</sup> (2) how its average call length has changed over the past decade as a result of the claimed "explosion" of short duration calls and why, despite the claimed "explosion" of short calls in recent years, its average call length in 1994 still exceeds the average call length reported by another LEC in 1989 by seven percent,<sup>2/</sup> or (3) whether short duration calls today are a larger or smaller percentage of Pacific Bell's growing overall interstate traffic.<sup>3/</sup> In the absence of this and other information required for reasoned consideration of Pacific Bell's proposal-- and for the other reasons presented in CompuServe's initial

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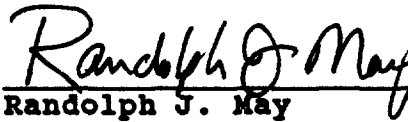
<sup>1/</sup> Opposition of the Ad Hoc Telecommunications Users' Committee, at 11-12.

<sup>2/</sup> MCI, Opposition To Petition For Rulemaking, at 3-4.

<sup>3/</sup> Opposition of the Ad Hoc Telecommunications Users' Committee, at 9-10.

comments -- the Commission should deny Pacific Bell's petition for rulemaking and, obviously, dismiss Southwestern Bell's suggestion that a waiver should be granted.

Respectfully submitted,  
COMPUSERVE INCORPORATED

A handwritten signature in cursive script, reading "Randolph J. May", is written over a horizontal line.

Randolph J. May  
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September 6, 1994

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CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "Reply Comments of Compuserve Incorporated," were served by U.S. Mail, postage prepaid, or by hand delivery, this 6th day of September, 1994, on the following:

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